

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW MEXICO**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 12-cv-0120 MCA/SMV

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF OTERO and  
STATE OF NEW MEXICO,

Defendants.

**THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, the United States hereby moves for summary judgment on all of its claims in this matter. The United States' Complaint for Declaratory and Injunctive Relief ("Complaint"), ECF No. 1, raises two counts, one against the State of New Mexico and one against the Board of County Commissioners of the County of Otero ("Otero County"). Count I seeks a declaration that NMSA § 4-36-11 (2001) ("New Mexico Statute," ECF No. 1-1) is preempted by Federal law and is unconstitutional, invalid, null, and void. ECF No. 1 ¶¶ 49-55 (Count I). Count II seeks a declaration that Otero County Resolution #05-23-11/99-50 ("Resolution," ECF No. 1-2) is also preempted by Federal law and is unconstitutional, invalid, null, and void. ECF No. 1 ¶¶ 56-61 (Count II). Summary judgment in favor of the United States is appropriate because there is no dispute of material fact and the United States is entitled to judgment as a matter of law. The United States therefore respectfully requests that the Court enter summary judgment in its favor on Counts I and II, and deny Otero

County's motion for summary judgment, ECF No. 63. Defendants, through counsel of record, have been consulted and oppose this Motion.

Respectfully submitted this 4th day of June, 2014.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 4, 2014, Plaintiff filed through the United States District Court ECF System the foregoing Notice to be served by CM/ECF electronic filing on all counsel of record.

/s/ Andrew A. Smith  
ANDREW A. SMITH  
U.S. Department of Justice